IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.1178 OF 2005

Vitthal Ramchandra Kocharekar ..Appellant.

Vs.

Sitaram Ramchandra Kerkar & Ors. ..Respondents.

....

Mr.A.S.Khandeparkar for the Appellant.

Mr.A.G.Kundekar for Respondent Nos.1 to 6.

....

CORAM : DR.D.Y.CHANDRACHUD, J.

2nd December, 2005.

P.C. :

The Appeal filed by the Respondents challenging the judgment of the Civil Judge, Junior Division, Vengurla dated 1st December, 2004 in Regular Civil Suit 31 of 2003 was allowed and the claim came to be rejected on the ground that the suit had not been valued correctly on the basis of the market value. Counsel appearing for the

Appellant, the original Plaintiff states that the Appellant is ready and willing to value the suit correctly and to pay the deficit Court fee but that, the First Appellate Court ought to have permitted the Appellant to do so. Having regard to the submission which has been urged, I am of the view that it would be appropriate and proper if this course of action were to be adopted by the First Appellate Court. Accordingly, the judgment and order of the Additional District Judge dated 2nd July, 2005 is quashed and set aside and Regular Civil Appeal 15 of 2005 is restored to the file of the Additional District Judge. The Appellant shall have a period of four weeks from today to carry out the necessary amendment correctly valuing the subject matter of the suit and to pay the deficit Court fee within a period of two weeks thereafter. The Appeal is accordingly disposed of. The Additional District Judge shall dispose of the First Appeal thereafter furnishing to the parties an opportunity of being heard.